

Surrogate's Court  
of the  
County of New York



JANE PASSENGANT  
CHIEF CLERK

31 CHAMBERS STREET  
NEW YORK, NY 10007

Dear Sir or Madam:

The Attorney for the estate is: Ralph M. Engel Firm Name Rosen & Reade

Address: 757 Third Avenue

City/State/Zip: New York N.Y. 10017

Phone: (212) 303-9000

The fiduciary of the estate is: Dominic J. Gaeta

Address: 533 Lotus Road

City/State/Zip: RidgeWood NJ

Phone: \_\_\_\_\_

The File/Case Number of the estate is: Ms. Joan Todd File # 2001/2135

Sincerely

*Jane Passengant*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Clifford L. Hersh et al.  
SERIAL NO.: 09/701,797  
FILING DATE: December 1, 2000  
TITLE: Method for Increased Concurrency in a Computer System  
EXAMINER: Unknown  
ART UNIT: Unknown  
ATTY. DKT. NO.: PA1675US

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Declaration of Colby B. Springer

I, Colby B. Springer, hereby declare that the facts set forth herein are within my personal knowledge, or appear from documents and information received by me in the course of this matter and, if called upon to do so, could and would testify to the truth thereof.

(1) I am an attorney duly licensed to practice law in the State of California and am presently familiar with the facts surrounding the above-identified application;

(2) On or about 11 September 2003 I did receive a copy of a facsimile from the Surrogate's Court of the County of New York setting forth the estate information for one Mrs. Joan Todd, deceased;

(3) The Surrogate's Court of New York County designated Mr. Ralph M. Engel as the attorney for the Joan Todd estate and Mr. Dominic J. Gaeta as the fiduciary;

(4) On 15 September 2003, I "looked up" the contact information for Mr. Ralph M. Engel with the law firm of Rosen & Reade utilizing the Internet search engine at [www.google.com](http://www.google.com);

(5) Through use of the aforementioned Internet search engine, I was informed the law firm of Rosen & Reade had been acquired by the law firm of Sonnenschein Nath & Rothenthal *LLP* and that Mr. Robert Engel continues to practice law at that firm;

(6) On 15 September 2003 I proceeded to contact the New York office of Sonnenschein Nath & Rothenthal *LLP* and requested to speak with Mr. Rosenthal;

(7) On 15 September 2003 I did speak with Mr. Robert Engel who confirmed he was the attorney for the estate of Ms. Joan Todd;

(8) On 15 September 2003 Mr. Robert Engel informed me that Mr. Dominic J. Gaeta was, in fact, the executor and beneficiary of the Joan Todd estate and that Mr. Gaeta was a client of the Sonnenschein Nath & Rothenthal *LLP* firm;

(9) On 15 September 2003 I did explain to Mr. Robert Engel the situation surrounding the declaration for the present application and asked if Mr. Gaeta, as his client and the executor of the Joan Todd estate, would be able to assist in executing the proper documents as required by the laws and regulations governing the issue of patents in the United States;

(10) On 15 September 2003 Mr. Robert Engel, in response to my query, requested I deliver to his care the documents needing to be executed to resolve the present matter;

(11) On 17 September 2003 I did deliver to Mr. Robert Engel, as counsel for Mr. Gaeta, via Express Mail a copy of the patent application identified above and the declaration attached herein as *Exhibit C*;

(12) The declaration was received by Mr. Engel's office as evidenced by the copy of the Express Mail Label EL 504 269 984 US and United States Postal Service confirmation on 19 September 2003; that label and confirmation are attached herein as *Exhibit D*;

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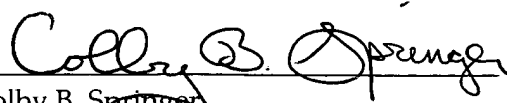
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(13) I did contact Mr. Robert Engel via telephone on 24 September 2003 and request the status of the declaration sent to his care on behalf of Mr. Dominic Gaeta;

(14) As of the date of execution of this declaration, Mr. Robert Engel nor Mr. Dominic Gaeta have informed me as to whether Mr. Gaeta will, in fact, execute the requisite declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

25 September 2003

  
Colby B. Springer

## DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

### Method for Increased Concurrency in a Computer System

the specification of which was filed in the U.S. Patent Office on December 1, 2000 and assigned application number 09/701,797.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under Title 35, United States Code §119(a)-(d) or (f) or §365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

#### No Foreign Priority Benefit Claimed

I hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

#### No Provisional Priority Benefit Claimed

I hereby claim the benefit under Title 35, United States Code §120 of any United States application(s), or §365(c) of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application.

**PCT/US99/12433**  
Application Number

**June 3, 1999**  
International Filing Date

**Abandoned**  
Present Status of Application

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**POWER OF ATTORNEY:** I hereby appoint the attorneys and agents associated with the Customer Number 22830 to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

**SEND ALL CORRESPONDENCE TO:**

CARR & FERRELL LLP  
2225 East Bayshore Road, Suite 200  
Palo Alto, CA 94303  
TEL: (650) 812-3400  
FAX: (650) 812-3444

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor: Clifford L. Hersh Citizenship: USA

Inventor's signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
(Permanent ink only) (Date of Signature)

Mailing Address: 801 Mahler Road, Suite G, Burlingame, CA 94010

Residence Address: 2361 Piedmont Avenue, Berkeley, California 94704

Full name of second inventor: Herbert W. Sullivan Citizenship: USA

Inventor's signature: Executed by Legal Representative Dated: \_\_\_\_\_

Mailing Address: 205 West End Avenue, New York, New York 10023 (Last known)

Residence Address: 205 West End Avenue, New York, New York 10023 (Last known)

I, Dominic Gaeta, as the legal representative of Ms. Joan Todd, deceased, who initially made application for this patent application as the sole heir of the co-inventor, Herbert Sullivan, upon and information and belief, do declare the foregoing to be true and correct on behalf of Ms. Joan Todd on behalf of Mr. Herbert Sullivan.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

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Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Legal Representative: Dominic Gaeta      Citizenship: \_\_\_\_\_

Representative's signature: \_\_\_\_\_      Dated: \_\_\_\_\_  
(Permanent ink only)      (Date of Signature)

Mailing Address: \_\_\_\_\_  
*Where the legal representative normally receives mail*

Residence Address: \_\_\_\_\_  
*If the legal representative lives at a location different than his mailing address*

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37 CFR §1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability. A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

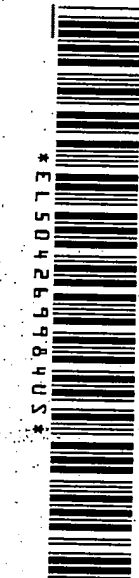
(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

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Ralph M. Engel  
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Date: 09/23/2003

Fax Transmission To: COLBY SPRINGER  
Fax Number: 650-812-3444

Dear COLBY SPRINGER:

The following is in response to your 09/23/2003 request for delivery information on your Express Mail item number EL504269984US. The delivery record shows that this item was delivered on 09/19/2003 at 11:34 AM in NEW YORK, NY 10112 to O MONTALVO. The scanned image of the recipient information is provided below.

Signature of Recipient: Delivery Section

Noland Montalvo  
Noland Montalvo

Address of Recipient: Sonnenschein 1221 6ave

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

EXHIBIT D2

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